FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1922 OF 2005

Office Notes, Office Memoranda appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Order

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Mr.Kishor Patil with P.N.Joshi, for Petitioners.

Mr.M.V.Upadhye for Respondent nos.1 &2.

CORAM: D.K.DESHMUKH,J.

DATED: 26th October, 2005.

P.C.:-

1. I have heard the learned Counsel appearing for both the sides pursuant to the notice of final disposal issued by the Court. In the order impugned in the petition, the Trial

Court has directed the present petitioners to pay interim maintenance at the rate of Rs.5000/- per month to plaintiff nos.1 and 2 each from the date of the suit till the disposal of the suit. The plaintiffs have filed the suit for decree of partition of the property of the joint family. They are claiming the property as heirs of the deceased Prakash who was husband of the plaintiff no.1 and father of plaintiff no.2. The defence of the defendants was that after the death of Mr.Prakash the joint family property was partitioned by Partition Deed dt.26.8.1992. That deed is signed by the plaintiff no.1 for herself and as a guardian of plaintiff no.2. By that Partition Deed, the plaintiffs have been given their share in the property. Though the plaintiffs have file the suit for partition of the same property which is subject matter of the Partition Deed which is a registered deed, in the plaint

neither there is any prayer made for setting aside the partition nor it is explained as to why inspite of that Partition Deed the property continued to be joint family property. In a case of registered Partition Deed, unless plaintiffs claim that the Partition Deed is not acted upon or not binding upon them and claims a decree of declaration to that effect, the suit of the plaintiffs in which decree of partition of the same property which is subject matter of the Partition Deed, would not be maintainable. Therefore, I find that the plaintiffs do not have prima facie case to claim a decree of partition of the joint family property and to claim share of deceased Prakash in that property.

2. In view of this situation, therefore, obviously as the plaintiffs do not have prima facie case in their favour, no order for payment of any maintenance to the plaintiffs should

have been made. In the result therefore, the petition succeeds and is allowed. Rule is made absolute in terms of prayer clause (a).

No order as to costs.